IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS. 86, 87, 88 89 AND 90 OF 2005

CRIMINAL MISCELLANEOUS APPLICATION NO. 86 OF 2005

Shri Jaiwant Upasso Gaunkar. ... Applicant

versus

State ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 87 OF 2005

Shri Sanjiv Gaunkar. ... Applicant

versus

State ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 88 OF 2005

Shri Ratnesh Bablo Gaunkar .... Applicants

versus

State ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 89 OF 2005

Shri Bablo Upasso Gaunkar .... Applicants

versus

State ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 90 OF 2005

Shri Gopal Bablo Gaunkar ... Applicants

versus

State ... Respondent

Mr. S. D. Lotlikar, Senior Counsel with Ms. Kamaxi Sambari, Advocate for the Applicants in all the applications.

Mr. S. N. Sardessai, Public Prosecutor for the State in all the applications.

CORAM : V. M. KANADE, J.

DATE : 17TH JUNE, 2005.

P.C.:

Heard the learned Senior Counsel appearing on behalf of the Applicant and the learned Public Prosecutor appearing on

behalf of the State.

The Applicants were arrested pursuant to a complaint filed by one Sanjiv Chandrakant Gaunkar in the Ponda Police Station on 17-11-2004. An offence under Sections 143, 147, 148, 302 r/w Section 149 of the Indian Penal Code was registered against the Applicants. The case of the Complainant is that on 17-11-2004 when he had gone to his property he noticed that his brother was lying on the road and on further inspection he noticed that he was dead. He had further stated that his brother was involved in the murder of one Rama Gaunkar, the brother eof the Applicant and was finally convicted by the Court and as a result of this there was an enemity between the family of the Complainant and the Accused. The Applicants were arrested on 19-11-2004 and 24-11-2004 and since then they are in judicial custody. The prosecution has completed the investigation and has filed a charge-sheet. The Applicants have annexed a copy of the charge-sheet to this application. The application for bail filed by the Applicants in the Court of Sessions Judge, North Goa was dismissed on 11-3-2005.

The learned Counsel appearing on behalf of the

Applicants has submitted that from the charge-sheet it can be seen that the prosecution has relied upon the statement of one eye witness namely Mohandas. The Complainant who is the brother of the deceased admittedly had not witnessed the incident. Apart from the evidence of Mohandas, there is no other witness who has either seen the incident or has corroborated the testimony of eye witness Mohandas. He has submitted that even if the statement of Mohandas is accepted an offence under Section 302 of the Indian Penal Code cannot be made out. He further submitted that the said statement of Mohandas indicated that the said witness instead of informing the Police or the brother of the deceased did not take any steps to inform the occurrence of the said incident to any of the villagers or the Police and his statement was recorded on the next day after the complaint was lodged by Sanjiv Gaunkar.

The learned Public Prosecutor appearing on behalf of the State submitted that the Applicants had a strong motive for committing the said offence. He submitted that apart from the motive the prosecution was relying on the statement of Mohandas who was the sole eye witness who had seen the incident and there was every possibility that the Applicants may threaten this witness if they are released on bail. He further invited my attention to the Post Mortem Report annexed to the charge-sheet. He submitted that there were as many as 16 injuries on the person of the

deceased. It is, therefore, submitted that the said application for bail should be dismissed.

The Applicants are in jail since 17-11-2004. The witness Mohandas in his statement has named practically all the male members of the family of the Applicants. Charge-sheet has already been filed. From the statement of the eye witness it can be seen that the role played by each of the Applicants in assaulting the deceased has not been stated. The dead body of the deceased was found in the property of the Applicants according to the prosecution and further the said witness Mohandas has stated that after having consumed liquor the deceased and the said Mohandas were returning home and deceased had entered the property of the Applicants for answering the call of nature. Mohandas thereafter having seen the incident does not report this fact either to the Police or to the brother of the deceased but after taking bath informs his wife about the said incident. In view of this testimony and particularly in view of the fact that a charge-sheet has already been filed the Applicants are entitled to be released on bail. Accordingly, the application is allowed. The Applicants are allowed to be released on bail in the sum of Rs.5000/- with one surety in the like amount to the satisfaction of the trial Court. The Applicants, however, shall report to the Ponda Police Station once a week for a period of 6 months and thereafter, after the evidence of Mohandas is recorded shall report once in a

month. The application is allowed in the above terms.

It is made clear that the trial Court shall not be influenced by any observations made by this Court while passing the Order.

Authenticated copy of this Order be issued to the parties.

V. M. KANADE, J.

RD.